



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 1, 2004

Mr. J. David Dodd, III
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
1800 Lincoln Plaza
500 North Akard
Dallas, Texas 75201

OR2004-2637

Dear Mr. Dodd:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 198592.

The Allen Police Department (the "department") received a request for all information in the requestor's personnel file. You claim that the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note that the submitted information consists solely of a videotape recording of an internal affairs investigation interview. To the extent that additional information responsive to the request exists, we assume that you have released it to the requestor. If you have not released any such information, you must release it to the requestor at this time. *See* Gov't Code §§ 552.301(a), .302.

You assert that the submitted information is excepted from disclosure under section 552.108(a)(1) of the Government Code. This provision excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a)(1). A governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). We note, however, that section 552.108 is generally inapplicable to a police department's internal

administrative investigations that do not involve the investigation or prosecution of crime. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.); *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied).

In this instance, you state that the submitted information “relate[s] to an investigation” and that “release of the documents would reveal the investigative methods of the [department].” However, you do not inform us, nor does review of the submitted information indicate, that the investigation at issue is criminal in nature. In addition, you have failed to otherwise explain how release of any part of the submitted information “would interfere with the detection, investigation, or prosecution of crime.” Gov’t Code § 552.108(a)(1). Thus, none of the submitted information may be withheld on the basis of section 552.108(a)(1). *See City of Fort Worth*, 86 S.W.3d at 328-29 (section 552.108 generally not applicable to internal administrative investigations involving law enforcement officers that did not result in criminal investigation or prosecution); *Morales*, 840 S.W.2d at 526 (predecessor to section 552.108 not applicable where no criminal investigation or prosecution of police officer resulted from investigation of allegation of sexual harassment); Open Records Decision No. 350 (1982) (predecessor to section 552.108 not applicable to internal affairs investigation); *see also* Gov’t Code §§ 552.108(a)(1), .301(e)(1)(A); *see also Pruitt*, 551 S.W.2d 706 (governmental body must reasonably explain how and why release of requested information would interfere with law enforcement). As the department claims no other exceptions, the submitted information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the

governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Amy D. Peterson
Assistant Attorney General
Open Records Division

ADP/sdk

Ref: ID# 198592

Enc. Submitted documents

c: Mr. Steve Schoolcraft
P.O. Box 1301
Princeton, Texas 75407
(w/o enclosures)